

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL NO. : _____
	:	
v.	:	DATE FILED : _____
	:	
CHERYL YVONNE BARNETT	:	VIOLATIONS:
VERNON E. BARNETT	:	18 U.S.C. §§ 371 and 1349 (conspiracy to
NELIA T. BEE	:	commit mail fraud - 1 count)
	:	18 U.S.C. § 1341 (mail fraud - 8 counts)
	:	18 U.S.C. § 2 (aiding and abetting)

INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

At all times material to this indictment:

THE FEN-PHEN LITIGATION

1. Pondimin (also known as fenfluramine), and Redux (also known as dexfenfluramine), were prescription diet drugs that were distributed through doctors and weight loss clinics. When Pondimin and/or Redux were taken in combination with Phentermine, the combination was popularly referred to as Fen-Phen.

2. On September 15, 1997, American Home Products Corporation (“AHP”), later known as Wyeth (collectively “Wyeth”), withdrew the diet drugs Pondimin and Redux (the “Diet Drugs”) from the market. Prior to 1997, and continuing to the present, individuals who had ingested Pondimin and/or Redux, alone or in combination with Phentermine, filed individual lawsuits and class actions in federal and state courts against Wyeth and others, alleging that the use of the Diet Drugs had, or may have, adversely affected their health. The alleged injuries

included: heart valve regurgitation, valvular heart disease, primary pulmonary hypertension, and/or an increased risk of developing these conditions. The lawsuits sought remedies including monetary damages, reimbursement for medications, medical monitoring and screening.

3. On December 10, 1997, the Judicial Panel on Multidistrict Litigation transferred all federal Diet Drug cases to the United States District Court for the Eastern District of Pennsylvania (the “District Court”) for coordinated or consolidated pretrial proceedings.

4. Counsel for plaintiffs and Wyeth prepared and presented to the Court a proposed Nationwide Class Action Settlement Agreement (“Settlement Agreement”) and related documents, seeking certification of a proposed settlement class. The District Court approved the Settlement Agreement.

5. Pursuant to the Settlement Agreement, on September 1, 2000, the AHP Settlement Trust (“Trust”) was established by order of the District Court. The Trust is a special purpose entity established to administer the provisions of the Settlement Agreement. The Trust has, at all times, been located in the Eastern District of Pennsylvania.

6. The Trust administers and processes the claims of, and makes payments of benefits to, members of the settlement class who registered pursuant to the terms of the Settlement Agreement and filed claims with the Trust in connection with their use of the Diet Drugs. These benefits, and associated administrative costs, are paid by the Trust with funds supplied by Wyeth.

7. The Settlement Agreement provided for a variety of benefits, including refunds for costs of the Diet Drugs, medical monitoring, and some medical treatment. The Settlement Agreement also provided for compensation for class members who could demonstrate

the existence of certain defined valvular heart conditions. The amount of the financial compensation for such valvular heart conditions was determined under a pre-established Matrix. The so-called “Matrix Benefits” were determined by several factors; these included the length of time the claimant used the Diet Drugs, the severity of the claimant’s valvular heart condition, and the claimant’s age.

8. To be eligible for any benefits under the Settlement Agreement, an individual must (a) have ingested the Diet Drugs, alone or in combination with any other substance, and (b) have "registered" with the Trust. Registration with the Trust was accomplished by filing a “Blue Form” or a “Pink Form” with the Trust by mailing, or otherwise delivering it to the Trust in the Eastern District of Pennsylvania.

9. Each claimant filing a Blue Form with the Trust was required to submit certain kinds of specified evidence to substantiate that he or she had in fact been prescribed one or more of the Diet Drugs. One type of evidence accepted by the Trust was a prescription pill bottle showing that one or more of the Diet Drugs had been prescribed and purchased.

10. Claimants eligible to receive “Matrix Benefits” under the Settlement Agreement were those individuals who had ingested the Diet Drugs and who could establish serious levels of valvular heart disease. Individuals seeking such Matrix Benefits were required to file a separate “Green Form” with the Trust in the Eastern District of Pennsylvania in addition to their Blue Form.

11. Each claimant for Matrix Benefits was required to submit, among other things, a recording of an echocardiogram and a cardiologist’s echocardiogram report based on such echocardiogram. By misreporting measurements from the echocardiogram, the severity of a

claimant's medical condition could be exaggerated, thereby qualifying the claimant for substantially increased benefits from the Trust. For example, moving from Matrix level I to Matrix level II could increase a claimant's benefits by hundreds of thousands of dollars.

12. The average Matrix payment from the Trust is in excess of \$350,000.

13. An alternate route by which a claimant could receive substantial benefits as a consequence of having ingested the Diet Drugs would be to file an "Orange Form" with the Trust, in the Eastern District of Pennsylvania. A claimant who filed an Orange Form preserved his or her right to file a law suit against Wyeth for his or her alleged Diet Drug related injuries.

THE DEFENDANTS

14. Defendant CHERYL YVONNE BARNETT was a resident of Texas. Defendant CHERYL YVONNE BARNETT never had any of the Diet Drugs prescribed for her.

15. Defendant VERNON E. BARNETT was a resident of Texas. Defendant VERNON E. BARNETT was the brother of defendant CHERYL YVONNE BARNETT. Defendant VERNON E. BARNETT never had any of the Diet Drugs prescribed for him.

16. Defendant NELIA T. BEE was a resident of Texas. Defendant NELIA T. BEE was the mother of defendants CHERYL YVONNE BARNETT and VERNON E. BARNETT. Defendant NELIA T. BEE never had any of the Diet Drugs prescribed for her.

THE CONSPIRACY

17. From in or around May 2002 to in or around July 2006, in Philadelphia, in the Eastern District of Pennsylvania, and elsewhere, defendants

**CHERYL YVONNE BARNETT
VERNON E. BARNETT and
NELIA T. BEE**

conspired and agreed together and with others known and unknown to the grand jury, to commit an offense against the United States, that is, to knowingly devise a scheme to defraud the Trust and Wyeth, and to obtain money and property from them, by means of false and fraudulent pretenses, representations and promises, and to use the United States mails and commercial interstate carriers to further the scheme to defraud, in violation of Title 18, United States Code, Section 1341.

MANNER AND MEANS

It was part of the conspiracy that:

18. Defendants CHERYL YVONNE BARNETT, VERNON E. BARNETT and NELIA T. BEE agreed to represent that they had each been prescribed the Diet Drugs and to each seek compensation from the Trust and/or Wyeth.

19. Defendants CHERYL YVONNE BARNETT, VERNON E. BARNETT and NELIA T. BEE retained law firms to represent them in connection with filing claims with the Trust and/or filing a Fen-Phen lawsuit against Wyeth on their individual behalfs.

20. Defendants CHERYL YVONNE BARNETT, VERNON E. BARNETT and NELIA T. BEE executed forms registering themselves with the Trust for benefits to which they were not entitled, purportedly as a consequence of having ingested the Diet Drugs.

21. Defendant CHERYL YVONNE BARNETT executed an Orange Form in order to opt out of the Settlement Agreement so that she could file a lawsuit against Wyeth to recover for injuries that she had not actually sustained, purportedly as a consequence of having ingested the Diet Drugs.

22. Defendants CHERYL YVONNE BARNETT, VERNON E. BARNETT and NELIA T. BEE supported their claims with the Trust and/or lawsuit against Wyeth with false and fabricated evidence.

23. Defendants CHERYL YVONNE BARNETT, VERNON E. BARNETT and NELIA T. BEE submitted to the Trust and/or Wyeth false and fabricated pill bottle labels for the drug Redux. These labels purported to be from the Super S Pharmacy, 3708 E. Commerce, San Antonio, TX 78223, bore dates in 1989, and listed the prescribing physician as doctor Millenizer.

24. The pill bottle labels submitted by defendants CHERYL YVONNE BARNETT, VERNON E. BARNETT and NELIA T. BEE were false and fraudulent in that the defendants had never obtained the drug Redux from the “Super S Pharmacy,” 3708 E. Commerce, San Antonio, TX 78223; in that Redux was not available in the United States until 1996, nearly seven years after the date shown on the purported labels; in that there was no Super S Pharmacy at 3708 E. Commerce, San Antonio, TX 78223; and in that, in 1989, there was no licensed physician in Texas named Dr. Millenizer.

25. Defendant VERNON E. BARNETT mailed to the Trust in Philadelphia, Pennsylvania a copy of a cardiologist’s echocardiogram report from the Veterans Administration

Medical Center, which defendant VERNON E. BARNETT had altered to falsely show that he suffered from moderate to severe valvular regurgitation when he in fact did not.

OVERT ACTS

In furtherance of the conspiracy, defendants CHERYL YVONNE BARNETT, VERNON E. BARNETT and NELIA T. BEE, and others known and unknown to the grand jury, committed the following overt acts, in the Eastern District of Pennsylvania and elsewhere:

1. On or about July 22, 2002, defendant CHERYL YVONNE BARNETT executed a “Blue Form,” in order to register herself for settlement benefits, to which she was not entitled, with the Trust.

2. On or about October 7, 2002, defendant CHERYL YVONNE BARNETT executed an “Orange Form” for submission by her law firm to the Trust, in Philadelphia, Pennsylvania, in order to permit her to opt out of the settlement and file a lawsuit to recover for injuries she had not actually sustained, purportedly as a consequence of having ingested the Diet Drugs.

3. On or about April 11, 2002, defendant CHERYL YVONNE BARNETT sent by telefacsimile, to her law firm, false documents purporting to be labels from pill bottles, to establish that defendant CHERYL YVONNE BARNETT had purchased Redux from the Super S Pharmacy upon the prescription of Dr. Millenizer.

4. Defendant CHERYL YVONNE BARNETT caused her law firm to file a lawsuit on her behalf on or about May 27, 2003 against, among others, Wyeth. The Petition initiating that lawsuit alleged that defendant CHERYL YVONNE BARNETT had ingested Diet Drugs, including Redux, between February 1989 and June 1989 and that, as a consequence of

ingesting those drugs, defendant CHERYL YVONNE BARNETT suffered from heart valve damage. Attached to that Petition were copies of the false documents purporting to be labels from pill bottles that defendant CHERYL YVONNE BARNETT had sent to her law firm.

5. In or about March, 2003, defendant CHERYL YVONNE BARNETT executed a second “Blue Form” for submission by her law firm to the Trust, in Philadelphia, Pennsylvania. In addition to damages that she might collect from Wyeth as a result of her lawsuit, in this Blue Form defendant CHERYL YVONNE BARNETT sought \$6,000 from the Trust, to which she was not entitled, as a consequence of her purported ingestion of the Diet Drugs.

6. On or about August 1, 2002, defendant VERNON E. BARNETT executed a “Blue Form” in order to register himself for settlement benefits, to which he was not entitled, with the Trust. Defendant VERNON E. BARNETT’s Blue Form falsely represented that he had been prescribed, and had taken, Redux for 1095 days. That Blue Form further falsely represented that the Redux ingested by defendant VERNON E. BARNETT had been prescribed by Dr. Millenizer and that it had been purchased at the Super S Pharmacy.

7. In response to a deficiency notice from the Trust, on or about September 22, 2003, defendant VERNON E. BARNETT mailed to the Trust in Philadelphia, Pennsylvania, a copy of a cardiologist’s echocardiogram report from the Veterans Administration Medical Center, which defendant VERNON E. BARNETT had altered to falsely show that he suffered from moderate to severe valvular regurgitation. Also in response to that notice, defendant VERNON E. BARNETT sent to the Trust falsified documents that purported to be partial copies of a pill bottle for Redux.

8. In response to a final deficiency notice, on or about November 21, 2003, defendant VERNON E. BARNETT mailed to the Trust in Philadelphia a complete copy of a falsified document that purported to be a label from a pill bottle for Redux.

9. On or about May 2, 2002, defendant NELIA T. BEE executed a “Blue Form,” in order to register herself for settlement benefits, to which she was not entitled, with the Trust. Defendant NELIA T. BEE’s Blue Form falsely represented that she had been prescribed, and had taken, Redux for 60 days. That Blue Form further represented that the Redux ingested by defendant NELIA T. BEE had been purchased at the Super S Pharmacy, 3708 E. Commerce, San Antonio, TX 78223. Defendant NELIA T. BEE’s Blue Form had attached to it copies of two fraudulent documents that purported to be labels from two pill bottles for Redux.

10. On or about May 2, 2002, defendant NELIA T. BEE executed a “Green Form,” in order to register herself for Matrix benefits, to which she was not entitled, with the Trust.

11. Defendant NELIA T. BEE caused her Blue Form and Green Form to be mailed by her law firm to the Trust in Philadelphia, Pennsylvania. In the cover letter enclosing those forms, defendant NELIA T. BEE’s lawyers advised the Trust that defendant NELIA T. BEE’s estimated Matrix benefits were \$85,383.00.

All in violation of Title 18, United States Code, Sections 371 and 1349.

COUNTS TWO THROUGH FIVE

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 14 of Count One are incorporated here.

THE SCHEME

2. From in or around May 2002 to in or around May 2005, in Philadelphia,
defendant

CHERYL YVONNE BARNETT

devised and intended to devise a scheme to defraud the Trust and Wyeth, and to obtain money and property from them by means of false and fraudulent pretenses, representations and promises.

MANNER AND MEANS

It was part of the scheme that:

3. Paragraphs 18 through 25 of Count One are incorporated here as the
manner and means of the scheme.

THE MAILINGS

4. On or about each of the dates set forth below, in the Eastern District of
Pennsylvania, and elsewhere, defendant

CHERYL YVONNE BARNETT,

for the purpose of executing this scheme and attempting to do so, and aiding and abetting its execution, knowingly caused to be delivered by the United States Postal Service, according to the directions thereon, to the persons described below, the documents listed below, each mailing constituting a separate count:

COUNT	DATE OF MAILING	DESCRIPTION OF ITEM MAILED
2	July 25, 2002	Defendant's first Blue Form, mailed to the Trust in Philadelphia, by U.S. Mail.
3	February 14, 2003	Defendant's Orange Form, mailed to the Trust in Philadelphia, by U.S. Mail.
4	March 20, 2003	Defendant's second Blue Form, mailed to the Trust in Philadelphia, by U.S. Mail.
5	August 4, 2004	Defendant's second Blue Form and copies of what purported to be pill bottle labels, mailed to counsel for Wyeth, by U.S. Mail.

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS SIX THROUGH EIGHT

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 13 and 15 of Count One are incorporated here.

THE SCHEME

2. From in or around May 2002 to in or around May 2005, in Philadelphia,
defendant

VERNON E. BARNETT

devised and intended to devise a scheme to defraud the Trust and Wyeth, and to obtain money and property from them by means of false and fraudulent pretenses, representations and promises.

MANNER AND MEANS

It was part of the scheme that:

3. Paragraphs 18 through 25 of Count One are incorporated here as the
manner and means of the scheme.

THE MAILINGS

4. On or about each of the dates set forth below, in the Eastern District of
Pennsylvania, and elsewhere, defendant

VERNON E. BARNETT,

for the purpose of executing this scheme and attempting to do so, and aiding and abetting its execution, knowingly caused to be delivered by the United States Postal Service, according to the directions thereon, to the persons described below, the documents listed below, each mailing constituting a separate count:

COUNT	DATE OF MAILING	DESCRIPTION OF ITEM MAILED
6	August 1, 2002	Defendant's Blue Form, mailed to the Trust in Philadelphia by U.S. Mail.
7	September 22, 2003	A copy of what purported to be defendant's echocardiogram report from the Veterans Administration Medical Center, mailed to the Trust in Philadelphia, by U.S. Mail.
8	November 21, 2003	A copy of what purported to be a copy of a label from a Redux pill bottle, mailed to the Trust in Philadelphia, by U.S. Mail.

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT NINE

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 13 and 16 of Count One are incorporated here.

THE SCHEME

2. From in or around May 2002 to in or around July 2006, in Philadelphia, defendant

NELIA T. BEE

devised and intended to devise a scheme to defraud the Trust and Wyeth, and to obtain money and property from them, by means of false and fraudulent pretenses, representations and promises.

MANNER AND MEANS

It was part of the scheme that:

3. Paragraphs 18 through 25 of Count One are incorporated here as the manner and means.

THE MAILINGS

4. On or about July 20, 2006, in the Eastern District of Pennsylvania, and elsewhere, defendant

NELIA T. BEE ,

for the purpose of executing this scheme and attempting to do so, and aiding and abetting its execution, knowingly caused to be delivered by mail according to the directions thereon, a check in the amount of about \$2,000, from the Trust in Philadelphia to her law firm in Texas, in settlement of defendant's Fen-Phen claim.

All in violation of Title 18, United States Code, Sections 1341 and 2.

A TRUE BILL:

FOREPERSON

PATRICK L. MEEHAN
United States Attorney